

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Cbeyond Communications, LLC</b>	)	
<b>-vs-</b>	)	
<b>Illinois Bell Telephone Company d/b/a</b>	)	
<b>Illinois Bell</b>	)	<b>Docket No. 10-0188</b>
	)	
<b>Formal Complaint and Request for</b>	)	
<b>Declaratory Ruling pursuant to Sections 13-</b>	)	
<b>515 and 10-108 of the Illinois Public Utilities</b>	)	
<b>Act</b>	)	

**Exhibit 2**

**CONFIDENTIAL**

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLC	)	
-vs-	)	
Illinois Bell Telephone Company d/b/a	)	
AT&T Illinois	)	Docket No. _____
	)	
Formal Complaint and Request for	)	
Declaratory Ruling pursuant to Sections	)	
13-515 and 10-108 of the Illinois Public	)	
Utilities Act	)	

~~Formal~~First Amended Complaint and Request for Declaratory Ruling

Cbeyond Communications, LLP (“Cbeyond”), by its attorneys Kelley Drye & Warren, LLP, and pursuant to Sections 13-515, 9-250, 10-101 and 10-108 of the Illinois Public Utilities Act (“PUA”), and pursuant to Sections 200.170 and 200.220 of the Illinois Administrative Code (“Code”), respectfully petitions the Illinois Commerce Commission for an order declaring that Illinois Bell Telephone Company, d/b/a/ AT&T ~~Illinois~~Illinois is in violation of Sections 9-250, 13-514 and 13-801 of the PUA, and in breach of the parties’ Interconnection Agreement entered pursuant to Sections 251 and 252 of the federal Communications Act, 47 U.S.C. § 251, 252..

**Introduction**

This dispute arises because Illinois Bell charges Cbeyond for work it is not doing. Specifically, Illinois Bell charges Cbeyond to disconnect and fully re-provision a *loop* (as if it is engaged in truck rolls, installing repeaters, doublers and other Digital Service Speed 1 (“DS1”) outside plant installation activities) when asked to change the *transport* portion of an Enhanced Extended Loop (EEL). Those charges are not authorized by any statute, tariff, the parties’ Interconnection Agreement (ICA), or state and federal rate development or cost recovery rules. Those charges also unlawfully impair the development of telecommunications services

competition in Illinois. Cbeyond purchases from Illinois Bell Unbundled Network Elements (“UNEs”) both individually and in combinations called High Capacity Enhanced Extended Links (“High Capacity EELs”). A High Capacity EEL consists of a combination of a UNE local loop and a UNE dedicated DS1, DS3 or higher capacity transport facility or service that terminates in a collocation arrangement in an Illinois Bell wire center that is distant from the Illinois Bell wire center designed to serve the UNE loop. High Capacity EELs are used by Competitive Local Exchange Carriers (“CLECs”), and Cbeyond in particular, to provide voice and bundled voice/broadband internet services to small and medium-sized business customers. High Capacity EELs allow Cbeyond to extend the geographic scope of its services beyond the most dense wire centers, where collocations are often deployed, to include wire centers with more moderate density.

The parties’ Interconnection Agreement requires that Illinois Bell permit Cbeyond to “connect a Section 251 UNE or a combination of Section 251 UNEs with facilities or services obtained at wholesale from [Illinois Bell] (including access services) and/or with compatible network components or services provided by CLEC or third parties. . . .” ICA, TRO/TRRO Amendment, Section 5.2. The Interconnection Agreement also requires Illinois Bell to terminate a High Capacity EEL to a third party's collocation arrangement that meets the requirements of Section 6.3.4. ICA TRO/TRRO Amendment, Section 5.3.

**Cbeyond may convert an existing EEL “provided the rates, terms and conditions under which such Section 251 UNEs are to be provided are included within the CLEC’s underlying agreement.” ICA TRO/TRRO Amendment, Section 6.1. DS1 transport (the Section 251 UNE) terms are in the ICA (TRRO Amendment 3.1.4 and Schedule 9.2.7). The rates to disconnect the transport portion of a DS1/DS1 EEL are also in the ICA**

(Amendment 1, Attachment A, provides the Service Order Charge (line 132) and the provisioning of the disconnection (line 194) for the DS1 transport portion of a DS1/DS1 EEL). Once the disconnection of the DS1 transport portion of a DS1/DS1 EEL is accomplished, Cbeyond is entitled to one of two options:

(1) To order AT&T UNE DS3 transport connected: the DS3 transport UNE terms and conditions are in the ICA (TRRO Amendment 3.1.5 and Schedule 9.2.07) and the rates for ordering and provisioning the DS3 transport portion of an EEL are also in the ICA (Amendment 1, Attachment A, Service Order Charge to order DS3 transport portion of an EEL (line 139) and to provision it (line 218). To the extent Cbeyond wants multiplexing on a DS3, which it would here, that multiplexing is included in the DS3 rate.

(2) To order connection to an alternative collocation: the terms and conditions for that connection are included in the ICA (TRRO Amendment, section 5.2 – 5.3 provide that AT&T will cross-connect UNE loops to a third party's Section 261(c)(6) collocation via cross-connection). The rates for cross-connects are also in the ICA Pricing Schedule, page 7.

Illinois Bell imposes unlawful and discriminatory non-recurring charges to Cbeyond when Cbeyond exercises its rights under the parties' Interconnection Agreement to use a third-party transport provider for its High Capacity EELs, and when Cbeyond reconfigures the Illinois Bell-provided transport facilities associated with the High Capacity EEL. When Cbeyond changes the transport portion of a previously installed High Capacity EEL, Illinois Bell charges Cbeyond nonrecurring charges for both UNE *transport* as well as the UNE *Loop* even though Illinois Bell makes no change to the UNE Loop portion of the provisioned EEL. There is no

legal authority or basis for Illinois Bell to impose UNE Loop non-recurring charges in this case. Illinois Bell's actions unreasonably and unlawfully restrict Cbeyond's ability to use the third-party transport provider of its choice by unnecessarily and unlawfully increasing Cbeyond's cost to purchase transport service from competitive, third-party transport providers. As a result, since January 2006 Illinois Bell has billed Cbeyond \*\*\*\*Begin Confidential Information [REDACTED] End Confidential Information\*\*\*\* in unlawful loop non-recurring charges (in addition to the lawful, transport non-recurring charges that Illinois Bell is entitled to receive to disconnect the old transport and install the new transport). Illinois Bell, conceding that these charges are not valid, has issued credits to Cbeyond, but only in the amount of \*\*\*\*Begin Confidential [REDACTED] End Confidential\*\*\*\* This leaves a remaining balance through February 19, 2010 of \*\*\*\*Begin Confidential Information [REDACTED] End Confidential Information\*\*\*\* of unlawful, and uncredited, loop nonrecurring charges. Despite repeated demands that Illinois Bell cease imposing these charges, and repeated demands that Illinois Bell permit Cbeyond to use a third-party carrier without being subject to unlawful non-recurring charges, Illinois Bell now refuses to issue credits to Cbeyond and refuses to permit Cbeyond to use a third-party transport provider without the unlawful charges. Illinois Bell's conduct not only impairs Cbeyond's ability to provide local services to its customers and to compete against Illinois Bell, it also impairs the ability of other carriers to provide transport services to Cbeyond and other carriers.

Cbeyond requests that the Commission enforce the interconnection mandates of Illinois law and (1) declare that the Illinois Bell's charges and policies violate Sections 13-514, 9-250 and 13-801 of the PUA; (2) declare that the Illinois Bell's charges and policies violate the terms of the Interconnection Agreement between Illinois Bell and Cbeyond; (3) order Illinois Bell to cease and desist from violating the parties' Interconnection Agreement; (4) order Illinois Bell to

cease and desist with any collection activity it may take, or has taken, against Cbeyond to collect these charges; (5) order Illinois Bell to provide Cbeyond bill credits in the amount of \*\*\*\*\*Begin Proprietary Information [REDACTED] End Proprietary Information\*\*\*\*\* as set forth in Exhibit A and cease any and all billing of Loop non-recurring charges when the transport portion of previously installed EEL is changed, and (6) order Illinois Bell to provide such further relief as may be permitted under the PUA, including, but not limited to damages, attorneys' fees and costs.

### **PARTIES**

1.     ~~1.~~——Cbeyond is a Delaware-based Limited Liability Corporation with its headquarters in Georgia. Cbeyond received its certificate of service authority to provide telecommunications services in Illinois in Commission Docket No. 00-0469. Cbeyond currently has a binding and valid interconnection agreement with Illinois Bell, approved in Commission Docket No. 04-0420, with six subsequent amendments.

2.     ~~2.~~——Respondent Illinois Bell Telephone Company d/b/a Illinois Bell is an Illinois Corporation with headquarters in Chicago, Illinois. Illinois Bell is a Regional Bell Operating Company, as that term is defined in the federal Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 (the "Act"). Illinois Bell is also an incumbent Local Exchange Carrier, as that term is defined in the Act.

3.     ~~3.~~——Illinois Bell and Cbeyond have been in negotiations on this billing dispute since 2006. On February 8, 2010, Illinois Bell and Cbeyond both declared that this billing dispute was at an impasse in accordance with the Informal Dispute Resolution (IDR) process set forth in Article 1, Section 1.9.3 of the Interconnection Agreement.

4.     ~~4.~~—Pursuant to Section 13-515(c) and (d)(2), Cbeyond notified Illinois Bell of the violations alleged herein and offered Illinois Bell the opportunity to cure the violations. On February 26, 2010, Cbeyond contacted counsel for Illinois Bell and again demanded that Illinois Bell honor its duties under the interconnection agreements and state law. A copy of the letter is attached hereto as Exhibit B. At the time of filing this Complaint, Illinois Bell has not satisfactorily cured the unlawful conduct alleged herein. A copy of Illinois Bell's response letter is attached hereto as Exhibit C.

5.     ~~5.~~—Pursuant to Part 766.15(a) of the Commission's rules, Cbeyond agrees to waive the statutory timeline requirements in Section 13-515(d) of the PUA.

6.     ~~6.~~—Pursuant to Part 766.1050 of the Commission's Rules, Cbeyond agrees to electronic service to the email addresses listed in the signature section contained herein for any service necessary after the Commission has addressed the requested emergency relief under Section 13-515(e).

### **JURISDICTION**

7.     ~~7.~~—Cbeyond and Illinois Bell are subject to the jurisdiction of the Commission with respect to the matters raised in this Complaint.

8.     ~~8.~~—The Commission has jurisdiction over this proceeding under Sections 9-250, 10-101, 10-108, 13-514 and 13-515 of the Illinois Public Utilities Act.

9.     ~~9.~~—The Commission has jurisdiction under the federal Telecommunications Act of 1996 under 47 U.S.C. § 251(d)(3) (conferring authority to state commissions to enforce any regulation, order or policy that is consistent with the requirements of Section 251) with respect to the matters raised in this Complaint.

### **LEGAL FRAMEWORK**

10.     ~~10.~~—Section 9-250 of the Illinois Public Utilities Act provides that when “[t]he Commission shall have power . . . to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof.” 220 ILCS 5/9-250.

11.     ~~11.~~—Section 13-514 of the Illinois Public Utilities Act (PUA) provides, in relevant part, as follows:

Sec. 13-514. Prohibited Actions of Telecommunications Carriers. A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered per se impediments to the development of competition; however, the Commission is not limited in any manner to these enumerated impediments and may consider other actions which impede competition to be prohibited:

(1) unreasonably refusing or delaying interconnections or collocation or providing inferior connections to another telecommunications carrier;

(2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier;

\*\*\*\*\*

(6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

\*\*\*\*\*

(8) violating the terms of or unreasonably delaying implementation of an interconnection agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays, increases the cost, or impedes the availability of telecommunications services to consumers;

\*\*\*\*\*

(10) unreasonably failing to offer network elements that the Commission or the Federal Communications Commission has determined must be offered on an unbundled basis to another telecommunications carrier in a manner consistent



with the Commission's or Federal Communications Commission's orders or rules requiring such offerings;

(11) violating the obligations of Section 13-801;

(12) violating an order of the Commission regarding matters between telecommunications carriers.

220 ILCS 5/13-514.

12.       ~~12.~~—Section 13-801(b) of the Illinois Public Utilities Act provides as follows:

13-801 (b) Interconnection.

(1) An incumbent local exchange carrier shall provide for the facilities and equipment of any requesting telecommunications carrier's interconnection with the incumbent local exchange carrier's network on just, reasonable, and nondiscriminatory rates, terms, and conditions:

(A) for the transmission and routing of local exchange, and exchange access telecommunications services;

(B) at any technically feasible point within the incumbent local exchange carrier's network; however, the incumbent local exchange carrier may not require the requesting carrier to interconnect at more than one technically feasible point within a LATA; and

(C) that is at least equal in quality and functionality to that provided by the incumbent local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the incumbent local exchange carrier provides interconnection.

220 ILCS § 5/13-801(b).

13.       ~~13.~~—Section 13-515 of the Illinois Public Utilities Act reads as follows, in relevant part:

(a) The following expedited procedures shall be used to enforce the provisions of Section 13-514 of this Act. However, the Commission, the complainant, and the respondent may mutually agree to adjust the procedures established in this Section.

(b) (Blank).

(c) No complaint may be filed under this Section until the complainant has first notified the respondent of the alleged violation and offered the respondent 48 hours to correct the situation. Provision of notice and the opportunity to correct the situation creates a rebuttable presumption of knowledge under Section 13-514. After the filing of a complaint under this Section, the parties may agree to follow the mediation process under Section 10-101.1 of this Act. The time periods specified in subdivision (d)(7) of this Section shall be tolled during the time spent in mediation under Section 10-101.1.

## FACTS

14.       ~~14.~~—On May 20, 2004, Cbeyond and Illinois Bell executed an Interconnection Agreement that was adopted by Cbeyond pursuant to the terms of Section 252(i) of the federal Communications Act, 47 U.S.C. § 252(i). Cbeyond adopted the terms of the Interconnection Agreement between Illinois Bell (f/k/a “SBC Illinois”) and AT&T Communications of Illinois, Inc. dated as of January 1, 2004. The Illinois Commerce Commission approved the terms of the Illinois Bell and AT&T Communications of Illinois Interconnection Agreement in ICC Docket No. 03-0239.

15.       ~~15.~~—The Interconnection Agreement was amended in 2005 to reflect changes that were required to implement the FCC’s TRO<sup>1</sup> and TRRO<sup>2</sup> decisions (referred to herein as “TRO/TRRO ICA Amendment.”) These amendments were arbitrated by the Illinois Commerce Commission in the matter of *Access One, Inc., et al. v. Illinois Bell Telephone Company*, ICC Docket No. 05-0442, Order (December 15, 2005), Amended Order (December 21, 2005).

16.       ~~16.~~—Cbeyond purchases from Illinois Bell Unbundled Network Elements (“UNEs”) both individually and in combinations called High Capacity Enhanced

---

<sup>1</sup> *Triennial Review Order (TRO)*, 18 FCC Rcd. 16978, 2003 WL 22175730 (Sept. 17, 2003)

<sup>2</sup> *Triennial Review Remand Order (TRRO)*, 20 FCC Rcd. 2533, 2005 WL 289015 (Feb. 4, 2005)

Extended Links (“High Capacity EELs”). A High Capacity EEL provides a transmission route between the End User’s physical location and an Illinois Bell wire center that is different than the wire center that ~~ILLINOIS~~**Cbeyond** uses to serve the end user’s loop (i.e. an EEL extends the loop to a different wire center). EELs allow CLECs to serve customers in an entire ILEC local calling area or local access transport area (LATA) without having to collocate in every central office in the ILEC’s territory.

**17.** ———17.—An **Unbundled DS1 Loop (“UNE DS1 Loop”)** is a “Loop to be provided on an unbundled basis pursuant to this Agreement is defined as set forth in FCC Rule 51.319. Without limiting the foregoing it includes a transmission facility between a distribution frame (or its equivalent) in a[n Illinois Bell] Central Office and the Loop demarcation point at an End User premises.”<sup>3</sup> This definition applies to UNE DS1 loops provisioned on a stand alone basis and those provisioned as part of a High Capacity EEL.

**18.** ———18.—An **UNE Dedicated Transport (“UDT”)** “includes incumbent LEC transmission facilities between wire centers or switches owned by incumbent LECs, or between wire centers or switches owned by incumbent LEC and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.”<sup>4</sup> This definition applies to UNE UDT provisioned on a stand alone basis and that are provisioned as part of a High Capacity EEL.

**19.** ———19.—A **High Capacity EEL** is “a combination consisting of UNE loop(s) and UNE Dedicated Transport, together with any facilities, equipment, or functions

---

<sup>3</sup> ICA, Schedule 9.2.1.1.

<sup>4</sup> 47 C.F.R. §51.319(e)(1).

necessary to combine those UNEs (including, for example, with or without multiplexing capabilities).<sup>5</sup>

20.        ~~20.~~—The simplest High Capacity EEL that Cbeyond purchases from Illinois Bell is comprised of an UNE DS1 Loop connected to DS1 UDT. The facility, equipment, or functions necessary to combine the UNE DS1 Loop and DS1 UDT is a DS1 cross-connect on Illinois Bell’s main distribution frame (MDF) located in the serving wire center (SWC) of the loop. Diagram one below illustrates the network design for a simple DS1 Loop-DS1 UDT High Capacity EEL.

Diagram 1.

21.        ~~21.~~—To gain some of the scale efficiencies inherent in telecommunications and/or to take advantage of cost savings offered by competitive transport providers, Cbeyond also cross-connects UNE DS1 loops to transport facilities provided by third-party competitive transport carriers (“alternative transport”) and to multiplexed DS3 UDT facilities provided by Illinois Bell.

22.        ~~22.~~—The parties’ Interconnection Agreement requires that Illinois Bell permit Cbeyond to “connect a Section 251 UNE or a combination of Section 251 UNEs with facilities or services obtained at wholesale from [Illinois Bell] (including access services) and/or with compatible network components or services provided by CLEC or third parties. . . .” ICA, TRO/TRRO Amendment, Section 5.2.

---

<sup>5</sup> ICA, TRO/TRRO Amendment, Section 0.1.19.

23. 23.—The Interconnection Agreement also requires Illinois Bell to terminate a High Capacity EEL to a third party's collocation arrangement that meets the requirements of Section 6.3.4. ICA TRO/TRRO Amendment, Section 5.3.

24. 24.—When Cbeyond converts an existing UNE DS1 EEL provided by Illinois Bell to a UNE DS1 Loop combined with new transport (i.e. a multiplexed Illinois Bell Unbundled DS3 Transport or CLEC provided alternative transport), the existing cross-connections on the simple DS1 Loop/Transport EEL must be disconnected on the MDF and new cross-connections must be assigned to the new transport. Diagram two below illustrates the network design for a DS1 Loop cross-connected to new transport.<sup>6</sup>

Diagram 2.

25. 25.—Cbeyond has requested that Illinois Bell cross-connect DS1 Loops on High Capacity EELs to new transport by requesting High Capacity EEL be changed and cross-connections assigned to the connecting facility assignment (CFA) of the new transport (see, Diagram 2, Note [A]).

26. 26.—However, Illinois Bell will not process change orders to reassign cross-connections. Instead, to cross-connect previously installed loops on High Capacity EELs to new transport, Illinois Bell requires Cbeyond to first request disconnection of the UNE DS1 loops and then request that the UNE DS1 loops be “re-installed” to the CFA of the new transport.

---

<sup>6</sup> The establishment of cross-connection is typically referred to as either an installation or an assignment. The term “assignment” is sometimes used instead of “installation” because cross-connections can be done electronically (i.e. via keystrokes by a technician using an Operational Support System (OSS) computer terminal) without requiring any physical work.

27. 27.—Federal Communications Commission regulations provide that “[N]onrecurring charges . . . shall not permit an incumbent LEC to recover more than the total forward-looking economic cost of providing the applicable element”<sup>7</sup>

28. 28.—The Commission has held that the method to determine the Non-Recurring Charges (“NRCs”) for High Capacity EELs is “to identify the forward-looking activities, activity times, and occurrence probabilities of the tasks necessary to provision these CLEC order [sic].”<sup>8</sup>

29. ——— 29.—Nonrecurring charges for UNEs and combinations of UNEs were determined by the Commission in Docket 02-0864 to be compliant with Section 252(d)(1) of the Telecommunications Act of 1996.<sup>9</sup>

30. 30.—In Docket 02-0864, the Commission determined that the forward-looking economic cost of UNE DS1 Loop, DS1 Cross-Connects, DS1 Clear Channel Capability, DS1 UDT and DS3 Transport installation and disconnection was as follows:

<u>Element</u>	<u>Initial Install</u>	<u>Additional Install</u>	<u>Initial Disconnection</u>	<u>Additional Disconnection</u>
DS1 Loop to UDT CFA	\$248.22	\$135.15	\$11.97	\$8.25
DS1 Loop to Collo CFA	\$200.75	\$100.57	\$7.49	\$5.83
DS1 Loop to UDT (Collo)	\$280.64	\$146.40	\$17.20	\$12.13
DS3 UDT (Collo)	\$151.91	\$57.39	\$0.00	\$0.00
DS1 Loop Clear Channel	\$70.32	\$8.87	\$0.00	\$0.00
DS1 Cross-Connect	included in DS1 loop and UDT NRCs			

These rates were incorporated into the parties’ Interconnection Agreement.

31. 31.—The parties’ Interconnection Agreement states that Illinois Bell shall provide Cbeyond nondiscriminatory access to UNEs [at rates] in accordance with the Federal

---

<sup>7</sup> 47 CFR § 507(e).

<sup>8</sup> *In the matter of Illinois Bell Telephone Company Filing to increase Unbundled Loop and Nonrecurring Rates*, ICC Docket 02-0864, Order, at 174 (June 9, 2004.)

<sup>9</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

Telecommunications Acts of 1996, applicable FCC orders, rules and regulations and, applicable state statute, orders, rules and regulations.<sup>10</sup> The ICA further provides that “[i]n no event shall Illinois Bell require CLEC to purchase any Unbundled Network Element in conjunction with any other service or element.”

**32. Section 9.1.1 of the Interconnection Agreement requires Illinois Bell to “provide nondiscriminatory access to UNEs at rates in accordance with the Federal Telecommunications Acts of 1996, applicable FCC orders, rules and regulations and applicable state statute, orders, rule and regulations.” Exhibit D, § 9.1.1.**

**33. Section 9.1.3 of the Interconnection Agreement requires that Illinois Bell “price each UNE separately” and prohibits Illinois Bell from requiring C beyond “to purchase any Unbundled Network Element in conjunction with any other service or element.” ICA, Exhibit D, § 9.1.3.**

**34. Illinois Bell has agreed that the parties TRO/TRRO Amendment was intended to “give contractual effect to the effective portions of the TRO, TRO Reconsideration Order, and TRP Remand [Order] as set forth” in the TRO/TRRO Amendment. Exhibit D.**

**35. Section 0.1.19 of the TRO/TRRO Amendment provides that an EEL consists of a combination of UNE loop(s) and UNE Dedicated Transport, “together with any facilities facilities, equipment, or functions necessary to combine those UNEs (including, for example, with our without multiplexing capabilities.)” Exhibit D.**

**36. Section 5.2 of the TRO/TRRO Amendment requires Illinois Bell to “connect a Section 251 UNER or a combination of Section 251 UNEs with facilities or services**

---

<sup>10</sup> ICA, Article 9, Section 9.1.1.

obtained at wholesale from [Illinois Bell] (including access services) and/or compatible network components or services provided by CLEC or third parties . . .” Exhibit D. Section 5.3 of the TRO/TRRO Amendment provides that “Section 251 UNE loops may be access via cross-connection to a third-party’s Section 251(c)(6) collocation arrangement upon presentation of documentation of authorization by that third party.” Exhibit D. These sections require Illinois Bell to connect an existing installed UNE DS1 Loop to collocation or transport provided by a third-party without requiring the existing UNE DS1 Loop to be disconnected and reinstalled.

37. Section 6.1 of the TRO/TRRO Amendment requires Illinois Bell to make available to Cbeyond EELS on terms and conditions or as set forth in the parties’ Interconnection Agreement and “shall not impose any additional conditions or limitations upon obtaining access to EELs or to any other UNE combinations other than those set out in” the Agreement. In addition, Section 6.1 of the TRO/TRRO Amendment requires Illinois Bell to “provide access to Section 251 UNEs and combinations of Section 251 UNEs without regard to whether CLEC seeks access to the UNEs to establish a new circuit or to convert an existing circuit from a service to UNEs provided the rates, terms and conditions under which such Section 251 UNEs are to be provided are included within the CLEC’s underlying Agreement.” Exhibit D, Section 6.1.

38. ——— 32. ———The \$248.22 Initial, \$135.15 Additional, \$200.75 Initial, and \$100.57 Additional nonrecurring charges for DS1 Loop installation recovers cost associated with outside plant work to provision a UNE DS1 Loop.



39.       ~~33.~~—Illinois Bell performs no outside plant work on the loop when the transport portion of an EEL is changed to a new transport circuit, whether the new transport is provided by Illinois Bell or a third-party provider.

40.       ~~34.~~—The \$70.32 Initial and \$8.87 Additional DS1 Clear Channel Capability recovers cost associated with enabling the loop to transmit a clear channel bit stream.

41.       ~~35.~~—The DS1 Clear Channel Charge is applicable to format a DS1 loop to transmit a clear channel bit stream. When a previously installed DS1 Clear Channel Loop is cross connected to new transport, Illinois Bell does no work to establish or re-establish clear channel on a loop.

42.       ~~36.~~—When Illinois Bell cross-connects previously installed UNE DS1 loops to new transport, it also imposes several separate nonrecurring charges to allegedly disconnect and reinstall the UNE Loop, and install clear channel capability on the loop. Illinois Bell bills Cbeyond \$11.97, \$8.25, \$7.49 or \$5.83 Loop initial and additional disconnection charges, plus \$248.22, \$200.75, \$135.15 or \$100.57 UNE DS1 Loop initial and additional installation charges, plus \$70.32 or \$8.87 DS1 Clear Channel Capability initial and additional installation charges, when it reassigns the cross-connection between the previously installed loops and new transport. Illinois Bell does so even though it does not disconnect the loop from its termination on the main distribution frame and does not install a new loop. When Illinois Bell cross-connects previously installed UNE DS1 loops to new transport, no work is done on any portion of the unbundled loop, the loop circuit is not changed and the loop circuit identification number is not changed.

43.       ~~37.~~—There is no provision in the parties' Interconnection Agreement that authorizes Illinois Bell to charge Cbeyond the \$248.22, \$200.75, \$135.15 or \$100.57 UNE DS1 Loop initial and additional installation charges, no provision in the parties interconnection

agreement that authorizes Illinois Bell to charge Cbeyond the \$11.97, \$8.25, \$7.49 or \$5.85 UNE DS1 Loop initial and additional disconnection charges, and no provision in the parties interconnection agreement that authorizes Illinois Bell to charge Cbeyond the \$70.32 initial or \$8.87 additional DS1 Clear Channel installation charges, when Illinois Bell cross connects previously installed loops to new transport.

44.     ~~38.~~—The \$248.22, \$200.75, \$135.15 and \$100.57 UNE DS1 Loop installation charges, the \$11.97, \$8.25, \$7.49 and \$5.85 UNE DS1 Loop disconnection charges, and the \$70.32 and \$8.87 DS1 Clear Channel charges to change the transport portion of an EEL are inappropriate, unlawful and a violation of Cbeyond's Interconnection Agreement.

45.     ~~39.~~—When Cbeyond requests that previously installed UNE Loops be connected to new transport provided by Illinois Bell (e.g. the rearrangement of a UNE DS1 Loop/DS1 Transport High Capacity EEL to a UNE DS1 Loop/Multiplexed DS3 Transport EEL), Illinois Bell's cost to connect the new transport to the MDF where the existing DS1 loops are terminated is recovered in Illinois Bell's Unbundled Dedicated transport nonrecurring charges that were established by the ICC.

46.     ~~40.~~—Illinois Bell never sought or received Commission approval of a nonrecurring charge to connect existing UNE Loops to new transport provided by third-parties and the ICC has not established a stand-a-lone non-recurring charge for cross-connections (i.e. cross-connections provided without Illinois Bell provided transport).

47.     ~~41.~~—There is no separate or stand-alone nonrecurring charge in the parties' Interconnection Agreement to assign a cross-connection for an existing UNE Loop on High Capacity EEL to new transport, whether the new transport is provided by Illinois Bell (e.g. the

rearrangement of a UNE DS1 Loop/DS1 Transport High Capacity EEL to a UNE DS1 Loop/Multiplexed DS3 Transport EEL), or a third-party transport provider.

48. 42.—There is no tariff, or rate, charge or provision in the parties' Interconnection Agreement that authorizes Illinois Bell to impose UNE Loop nonrecurring charges when Illinois Bell changes the transport facility of a High Capacity EEL.

49. 43.—Notwithstanding that there is no Commission-approved separate or stand-alone nonrecurring charge to connect previously installed loop to new transport, and no physical work is done on the loop to connect previously installed loops to new transport, Illinois Bell unlawfully bills Cbeyond loop installation and disconnection nonrecurring charges, in addition to transport disconnection and installation fees, when Cbeyond rearranges transport on a High Capacity EEL.

50. 44.—It is unlawful ~~and violates the parties' Interconnection Agreement~~ for Illinois Bell to impose Loop installation and disconnection nonrecurring charges when Illinois Bell changes the transport of previously installed High Capacity EELs.

51. 45.—Illinois Bell requires Cbeyond to submit two (2) orders (i.e. a loop disconnection order and a loop installation order) to change the CFA of a previously installed loop when only one (1) order (i.e. a CFA change order) should be required.

52. 46.—Illinois Bell's conduct is unlawful because Illinois Bell is not required to disconnect or install the Loop to change the transport portion of an EEL, yet Illinois Bell imposes rates and charges as if it does.

53. ———47.—Illinois Bell's imposition of these UNE Loop nonrecurring charges is not consistent with the nonrecurring charges assessed by Illinois Bell when it disconnects UNE DS1 Loop(s) from a multiplexed UNE DS3 EEL or installs a new UNE DS1 Loop(s) on a

multiplexed DS3 EEL. When Cbeyond requests that Illinois Bell change the loop portion of a High Capacity EEL, Illinois Bell correctly recognizes that the UNEs provisioned on the EEL are unbundled and separated by cross-connections and Illinois Bell does not charge UDT nonrecurring charges to change UNE DS1 Loops on previously installed EELs.

54. 48.—For billing and ordering purposes, Illinois Bell treats the demarcation point between the loop and the transport on High Capacity EELs differently depending on what portion (i.e. the Loop or the Transport) of a High Capacity EEL is being changed. When the transport portion of an EEL is changed, Illinois Bell does no work on the loop side of the MDF yet Illinois Bell charges Cbeyond both UNE Loop **and** UNE UDT nonrecurring charges. Conversely, when the loop portion of an EEL is changed, Illinois Bell only charges loop non-recurring charges and correctly does not charge to disconnect or reinstall the UDT portion of the EEL.

55. 49.—On March 20, 2007, Illinois Bell agreed in writing to Cbeyond to waive all DS1 Loop non-recurring charges to change the transport portion of previously installed DS1 EELs from DS1 UDT to alternative transport provided by a 3<sup>rd</sup> Party collocated in the SWC.

56. 50.—Illinois Bell has not honored its commitment to Cbeyond to waive all DS1 Loop non-recurring charges to change the transport portion of a previously installed DS1 EELs from DS1 UDT to alternative transport provided by a 3<sup>rd</sup> Party collocated in the SWC.

57. 51.—Up until April 3, 2007, Illinois Bell credited Cbeyond most of the erroneous loop nonrecurring charges that it billed for Cbeyond requesting a change to the CFA of a previously installed loop. However, without explanation, after April 3, 2007, Illinois Bell stopped issuing most credits to Cbeyond for these erroneous and unlawful loop nonrecurring charges.

58.     ~~52.~~—Illinois Bell has unlawfully and erroneously billed, and not yet credited, Cbeyond amounts that are set forth in Exhibit ~~B~~A.

59.     ~~53.~~—Illinois Bell’s practice to impose nonrecurring charges not authorized by the parties’ Interconnection Agreement impairs the ability of Cbeyond to use third-party transport providers.

60.     ~~54.~~—Illinois Bell’s practice to impose nonrecurring charges not authorized by the parties’ Interconnection Agreement impairs the ability of Cbeyond to efficiently use Illinois Bell-provided transport when it needs to groom lower capacity transport onto higher capacity transport.

61.     ~~55.~~—By inappropriately increasing Cbeyond’s cost to migrate to higher bandwidth transport services, Illinois Bell has unreasonably restricted Cbeyond’s ability to utilize transport from alternative transport carriers. These actions have impaired and frustrated Cbeyond’s ability to purchase transport from third-party transport vendors and have damaged the development of local competition in the state of Illinois.

62.     ~~56.~~—During the period of dispute, Cbeyond has offered Illinois Bell the creation of a nonrecurring charge to connect previously installed UNE loops to new transport provided by third-parties.<sup>11</sup> To connect previously installed UNE Loops to new transport provided by third-parties, the cross-connect on the MDF must be reassigned from the old CFA to the new CFA. The activity/work that Illinois Bell performs to connect a previously installed UNE loop to new transport involves activity that is similar to what Illinois Bell performs to disconnect UNE Loops, or Unbundled Dedicated Transport, albeit the activity/work performed

---

<sup>11</sup> No additional or new cross connection nonrecurring charge is warranted when Illinois Bell provided DS1 UDT is replaced with Illinois Bell provided DS3 UDT because any cost incurred to connect the new transport to the MDF is included in the installation rate for the new Illinois Bell provided UDT (see, paragraph ~~39~~40, supra).

by the Illinois Bell technician is done in reverse order or with different keystrokes using Operational Support Systems (“OSS”) (e.g. instead of un-assigning cross-connects, the technician assigns cross-connects).

63. ~~57.~~—Cbeyond has proposed to amend the parties’ Interconnection Agreement to create a non-recurring rate, equal to the ICC’s previously determined Total Element Long Run Incremental Cost (TELRIC) incurred by Illinois Bell to disconnect a cross-connect, that would be applicable to change the CFA of previously installed DS1 Loops when no new Illinois Bell UDT is being provided (i.e. create stand-a-lone cross-connection installation and disconnection nonrecurring charges that are separate from the UNE Loop and UDT nonrecurring charges). In the Commission’s Order in Docket No. 02-0864, the Commission determined that the TELRIC incurred by Illinois Bell to change a cross-connection was approximately \$11.97 to \$17.20.

64. ~~58.~~—Upon information and belief, if the Commission were to conduct a TELRIC analysis to determine a cost-based rate to assign a cross-connection, Illinois Bell’s nonrecurring cost would be zero (\$0.00). Today, the work associated with pointing a previously installed UNE loop to new CFA could be done entirely by Cbeyond through an integrated Cbeyond and Illinois Bell OSS. Illinois Bell’s cost associated with pointing a previously installed loop to a new CFA would be investment (associated with its automated systems) and would be recovered through recurring rates under FCC TELRIC rules.

**COUNT ONE – ILLINOIS BELL’ ACTIONS VIOLATE SECTION 13-514 OF  
THE ILLINOIS PUBLIC UTILITIES ACT.**

65. ~~59.~~—Cbeyond repeats the allegations contained in Paragraphs 14 through ~~58~~64 above, as though fully stated herein.

66. ~~60.~~—Illinois Bell has knowingly impeded the development of competition in the local exchange market, in violation of Section 13-514 of the PUA, 220 ILCS 5/13-514.

67.     ~~61.~~—Illinois Bell has knowingly impeded the development of competition in the market for the provision of transport services, in violation of Section 13-514 of the PUA, 220 ILCS 5/13-514.

68.     ~~62.~~—Illinois Bell has unreasonably refused or delayed interconnection, or is providing inferior connections to Cbeyond in violation of 13-514(1) of the Illinois Public Utilities Act, 220 ILCS 5/13-514(1).

69.     ~~63.~~—Illinois Bell has unreasonably impaired the speed, quality or efficiency of services used by Cbeyond in violation of Section 13-514(2) of the PUA, 220 ILCS 5/13-514(2).

70.     ~~64.~~—Upon information and belief, Illinois Bell has unreasonably acted or failed to act in a manner that has had a substantial adverse affect on the ability of other carriers to provide transport services to Cbeyond, in violation of Section 13-514(6) of the PUA, 220 ILCS 5/13-514(6).

71.     ~~65.~~—Illinois Bell has unreasonably acted or failed to act in a manner that has violated the terms of and unreasonably delayed the implementation of the parties' Interconnection Agreement in a manner that delays, increases the cost, and impedes the availability of telecommunications services to consumers, in violation of Section 13-514(8) of the PUA, 220 ILCS 5/13-514(8).

72.     ~~66.~~—Illinois Bell has unreasonably failed to offer network elements that the Commission and the Federal Communications Commission have determined must be offered on an unbundled basis in a manner consistent with the Commission's or Federal Communications Commission's orders or rules requiring such offerings, in violation of Section 13-514(10) of the PUA, 220 ILCS 5/13-514(10).

73. 67.—By committing the alleged violations of the Interconnection Agreement and Section 13-801, Illinois Bell has unreasonably violated its obligations imposed by Section 13-801. This conduct by Illinois Bell is a violation of Section 13-514(11) of the PUA, 220 ILCS 5/13-514(11).

74. 68.—By imposing nonrecurring charges that have not been authorized under the Commission's Order in ICC Docket No. 02-0864, Illinois Bell has violated an order of the Commission regarding matters between telecommunications, carriers, in violation of Section 13-514(12) of the PUA, 220 ILCS 5/13-514(12).

75. 69.—As a direct result of the foregoing violations of Section 13-514 of the PUA, Cbeyond has suffered, and will continue to suffer direct, proximate and consequential damages.

**COUNT TWO – ILLINOIS BELL'S ACTIONS VIOLATE SECTION  
13-801 OF THE ILLINOIS PUBLIC UTILITIES ACT.**

76. ——— 70.—Cbeyond repeats the allegations contained in Paragraphs 14 through ~~58~~75 above, as though fully stated herein.

77. 71.—Section 13-801(b) provides that:

(b) Interconnection.

(1) An incumbent local exchange carrier shall provide for the facilities and equipment of any requesting telecommunications carrier's interconnection with incumbent local exchange carrier's network on just, reasonable, and nondiscriminatory rates, terms, and conditions:

\* \* \*

(C) that is at least equal in quality and functionality to that provided by the incumbent local exchange carrier to ~~any~~any other party to which the incumbent local exchange carrier provides interconnection.

220 ILCS 5/13-801(b).



78.     ~~72.~~—Illinois Bell’s conduct in billing Cbeyond for nonrecurring loop charges when Cbeyond requests a change in the transport facilities associated with a High Capacity EEL is a material and substantial violation of Section 13-801(b) of the Illinois Public Utilities Act.

79.     ~~73.~~—By unilaterally billing for services it is not providing, Illinois Bell and has knowingly and willfully violated Section 13-801(b) of the Illinois Public Utilities Act.

80.     ~~74.~~—As a direct result of Illinois Bell’s knowing, intentional and unlawful violation of Section 13-801(b), Cbeyond has suffered and will continue to suffer direct, proximate and consequential damages.

~~75.—Cbeyond repeats the allegations contained in Paragraphs 14 through 58 above, as though fully stated herein.~~

**COUNT THREE – ILLINOIS BELL’S ACTIONS VIOLATE SECTION  
9-250 OF THE ILLINOIS PUBLIC UTILITIES ACT.**

81.     ~~76.~~—Cbeyond repeats the allegations contained in Paragraphs 14 through ~~58~~80 above, as though fully stated herein.

82.     ~~77.~~—Section 9-250 of the Illinois Public Utilities Act provides that when “[t]he Commission shall have power . . . to investigate a single rate or other charge, classification, rule, regulation, contract or practice, or any number thereof, or the entire schedule or schedules of rates or other charges, classifications, rules, regulations, contracts and practices, or any thereof of any public utility, and to establish new rates or other charges, classifications, rules, regulations, contracts or practices or schedule or schedules, in lieu thereof.” 220 ILCS 5/9-250.

83.     ~~78.~~—The Commission has the authority to investigate the nonrecurring rates, charges, classifications, rules, regulations, contract and practice associated with Illinois Bell’s nonrecurring charges, including the nonrecurring charges imposed by Illinois Bell when Cbeyond requests that the transport portion of a High Cap EEL be changed to new transport.

84. 79.—Illinois Bell's imposition of unauthorized and excessive nonrecurring charges to Cbeyond is a substantial and material violation of Section 9-250 of the Illinois Public Utilities Act in that Illinois Bell's imposition of unauthorized nonrecurring charges is unjust, unreasonable and discriminatory, and the Commission is authorized to investigate Illinois Bell's rates, charges and practices, and impose rates, charges and practices that are just and reasonable.

#### **COUNT FOUR – BREACH OF INTERCONNECTION AGREEMENT**

85. ——— 80.—Cbeyond repeats the allegations contained in Paragraphs 14 through ~~58~~84 above, as though fully stated herein.

86. ——— 81.—Illinois Bell's imposition of UNE Loop nonrecurring charges when Cbeyond requests that Illinois Bell change the transport portion of a UNE High Cap EEL is a breach of the parties' Interconnection Agreement.

87. 82.—Cbeyond requests that the following persons be placed on the official service list for the purposes of this proceeding:

Greg Darnell  
Cbeyond Communications, LLC  
Director, ILEC Relations  
320 Interstate North Parkway, SE  
Atlanta, GA 30339  
(678) 370-2467  
[greg.darnell@cbeyond.net](mailto:greg.darnell@cbeyond.net)

Henry T. Kelly  
Michael R. Dover  
Kelley Drye & Warren LLP  
333 West Wacker Drive, 26<sup>th</sup> Floor  
Chicago, Illinois 60606  
(312) 857-2350  
[HKelly@KelleyDrye.com](mailto:HKelly@KelleyDrye.com)  
[MDover@KelleyDrye.com](mailto:MDover@KelleyDrye.com)

~~Gene Watkins~~  
**Gene Watkins**  
Cbeyond Communications, LLC  
Senior Counsel  
320 Interstate North Parkway, SE  
Atlanta, GA 30339  
(678) 370-2174  
[Gene.watkins@cbeyond.net](mailto:Gene.watkins@cbeyond.net)

Julie Musselman Oost  
Economic Analyst  
Kelley Drye & Warren LLP  
333 West Wacker Drive, 26<sup>th</sup> Floor  
Chicago, Illinois 60606  
(312) 857-2617  
[JMusselman@KelleyDrye.com](mailto:JMusselman@KelleyDrye.com)

## **PRAYER FOR RELIEF**

WHEREFORE, Cbeyond Communications, LLC, respectfully requests that the Commission grant its Complaint and Request for Declaratory Ruling, and enter judgment in favor of Cbeyond and against Illinois Bell, and that the Commission:

- A. Declare that Illinois Bell' billing for services not provided to Cbeyond are:
  - 1. a material breach of the terms of the Interconnection Agreement between Illinois Bell and Cbeyond;
  - 2. a violation of Section 13-514 of the Illinois Public Utilities Act;
  - 3. a violation of Section 13-801(b) of the Illinois Public Utilities Act;
  - 4. a violation of Section 9-250 of the Illinois Public Utilities Act; and,
- B. Order Illinois Bell to cease and desist from its breaching the terms of the Interconnection Agreement with Cbeyond;
- C. Order Illinois Bell to cease and desist from violating Section 13-514;
- D. Order Illinois Bell to cease and desist from violating Section 13-801(b);
- E. Order Illinois Bell to cease and desist from violating Section 9-250;
- F. Order Illinois Bell to credit Cbeyond for all inappropriate charges imposed since inception;
- G. Order Illinois Bell to pay to Cbeyond an amount equal to its direct, proximate and consequential damages, attorney fees and all other costs associated with bringing this action pursuant to Section 13-516(a)(3);
- H. Order Illinois Bell to reimburse the Commission for the costs associated with proceeding pursuant to Section 13-515(g);
- I. Order Illinois Bell to pay penalties of up to \$30,000 or 0.00825% of the telecommunications carrier's gross intrastate annual telecommunications revenue, whichever is greater, per violation pursuant to Section 13-516(a)(2);
- J. Grant Cbeyond such other relief, including the imposition of penalties against Illinois Bell, as mandated by statute or the Commission shall deem appropriate and just.

Respectfully Submitted,

Dated: March 9, 2010 **17, 2011**

CBEYOND COMMUNICATIONS, LLC

---

By one of its attorneys

Henry T. Kelly  
Michael R. Dover  
Kelley Drye & Warren LLP  
333 West Wacker Drive, 26<sup>th</sup> Floor  
Chicago, Illinois 60606  
(312) 857-2350  
[HKelly@KelleyDrye.com](mailto:HKelly@KelleyDrye.com)

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Cbeyond Communications, LLC

)

-vs-

)

Illinois Bell Telephone Company d/b/a

)

Illinois Bell

)

Docket No.

)

Formal Complaint and Request for

)

Declaratory Ruling pursuant to Sections

)

13-515 and 10-108 of the Illinois Public

)

Utilities Act

)

Exhibit D